

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 03-6088

DAVID MARTIN MCLESTER,

Petitioner - Appellant,

versus

ERNEST SUTTON,

Respondent - Appellee.

Appeal from the United States District Court for the Middle District of North Carolina, at Durham. James A. Beaty, Jr., District Judge. (CA-02-78-1)

Submitted: March 20, 2003

Decided: March 31, 2003

Before WILLIAMS and TRAXLER, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

David Martin McLester, Appellant Pro Se. Clarence Joe DelForge, III, OFFICE OF THE ATTORNEY GENERAL OF NORTH CAROLINA, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

David Martin McLester seeks to appeal the district court's order adopting the magistrate judge's recommendation and denying relief on his petition filed under 28 U.S.C. § 2254 (2000). An appeal may not be taken to this court from the final order in a habeas corpus proceeding unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2000). A certificate of appealability will not issue from claims addressed by a district court on the merits absent "a substantial showing of the denial of a constitutional rights." 28 U.S.C. § 2253(c)(2) (2000). As to claims dismissed by a district court solely on procedural grounds, a certificate of appealability will not issue unless the petitioner can demonstrate both "(1) 'that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right' and (2) 'that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.'" Rose v. Lee, 252 F.3d 676, 684 (4th Cir.) (quoting Slack v. McDaniel, 529 U.S. 473, 484 (2000)), cert. denied, 122 S. Ct. 318 (2001). We have independently reviewed the record and conclude McLester has not satisfied either standard. See Miller-El v. Cockrell, ___ U.S. ___, 2003 WL 431659, at *10 (U.S. Feb. 25, 2003) (No. 01-7662). Accordingly, we deny a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are

adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED